



Protecting Southwest Florida's unique natural environment and quality of life ... now and forever.

By Online Portal

July 28, 2016

US Environmental Protection Agency
Region 4 Freedom of Information
SNAFC Bldg, 61 Forsyth Street, SW, 9th Floor
Atlanta, GA 30303-8960

RE: FREEDOM OF INFORMATION ACT (FOIA) REQUEST Pertaining to Eden Oak, Lee County (SAJ-2010-02965)

Dear FOIA Officer:

I am submitting this request under the Freedom of Information Act, 5 U.S.C. ' 552, on behalf of the Conservancy of Southwest Florida ("Conservancy") with the address of 1495 Smith Preserve Way, Naples, FL 34102. The Conservancy is a non-profit corporation organized under the laws of the State of Florida.

REQUESTED DOCUMENTS

The Conservancy is requesting the following documents regarding the proposed Eden Oak project:

- All emails, letters, and documents related to this project from August 23, 2012 to present.

Some documents were previously requested via the Conservancy's Army Corps of Engineers FOIA request (referral control number FP-14-026703, letter dated December 15, 2014), but it is unclear if those documents (generated by the Corps and reviewed by the EPA) were ultimately provided back to the Army Corps or Conservancy. This FOIA request is to ensure the Conservancy has been provided these documents, as well as any newer documents regarding this project.



Conservancy of Southwest Florida has been awarded Charity Navigator's prestigious 4-Star top rating for good governance, sound fiscal management and commitment to accountability and transparency. Charity Navigator is America's largest and most respected independent evaluator of charities.

FEE WAIVER REQUEST

We further request that any fees associated with this request be waived because disclosure of the records is “likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii) and 43 C.F.R. Part 2. The basis for the fee waiver request is set out below. If you determine that a fee waiver is not appropriate, please contact me to discuss the approximate cost of obtaining the requested documents.

1. Released information concerns the operations or activities of the government. The Conservancy is seeking information pertaining to the Eden Oak development and the decisions, operations, and activities of the US Environmental Protection Agency (EPA), particularly in its coordination with the Army Corps of Engineers (ACOE), pertaining to this project. This information is central to an understanding of the EPA’s decision making process and the basis for its decisions pertaining to the review and permitting of this project. Decisions regarding the review and permitting of developments, particularly those that impact mangroves and wetlands, are highly controversial public issues in the community, particularly as they relate to destruction of fish and wildlife wetland habitats.

2. Disclosure of the requested documents will serve the public interest as it is “likely to contribute significantly to the public’s understanding of the operations or activities of the [EPA].” 5 U.S.C. §552(a)(4)(A)(iii). The public has an expressed interest in development projects complying with the Endangered Species Act (“ESA”) and Clean Water Act (“CWA”), which exist, among other reasons, to ensure that federal agencies protect endangered species habitat, wetlands, and adjacent waters. The Conservancy is seeking to promote and protect this public interest through the requested documents. The public interest in the disclosure of these documents is significant, because they may reflect potentially significant policy changes on the part of the EPA that could affect regionally-important wetlands and adjacent waters, as well as critical fish and wildlife/listed species habitats. Information that could “support oversight of [an agency’s] operations” is precisely the type of information that Congress considered to have a “high potential for contribution to public understanding.” McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1286 (9th Cir. 1987). “Watchdog” public advocacy groups - such as the Conservancy, which actively monitor and challenge agency actions and policies- help provide this oversight function in our system of government.

The Conservancy is requesting the information as a “watchdog” organization dedicated to providing the public information about government activities, or lack thereof, to protect endangered species and their habitat, as well as water resources. Congress has recognized the important institutional service “watchdog” groups provide, and expanded FOIA’s fee waiver provision specifically to facilitate access to agency records by citizen “watchdog” organizations, which utilize FOIA to monitor and mount challenges to governmental activities. See *Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (fee waiver intended to benefit public interest “watchdogs”).

Fee waivers are essential to such groups which:

rely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities – publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions....

The waiver provision was added to FOIA “in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,” in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups.

Better Gov’t Ass’n, 780 F.2d at 93-94.

3. Disclosure of the requested documents will result in a better understanding of EPA’s policy by the general public. Disclosure of the requested records will contribute to the understanding of the public at large, as opposed to the understanding only of the Conservancy or a narrow segment of interested persons. The Conservancy disseminates information that it receives from government agencies to its members and the public through newsletters and its website, www.conservancy.org to increase public awareness and understanding of the project and proposed agency action.

4. The public benefit of releasing these documents is significant. Information that could “support oversight of [an agency’s] operations” is precisely the type of information that Congress considered to have a “high potential for contribution to public understanding.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987). The material requested in the above-referenced FOIA request should offer important insight into the actions and decision-making process of the EPA regarding review and coordination on the Eden Oak project. The legislative history of FOIA includes the following:

A requester is likely to contribute significantly to public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Representatives English and Kindness). *Better Government Associations* arrived at a comparable conclusion. 780 F.2d at 94. This current request clearly meets this standard.

5. The Conservancy has no commercial interest in the requested information. This request is not primarily in the commercial interest of the Conservancy, as it has no commercial interest in these materials. The Conservancy is a non-profit corporation organized under the laws of the State of Florida and recognized by the Internal Revenue Service as a 501(c)(3) organization dedicated to public education about the conservation of natural resources in Southwest Florida. The Conservancy has a long-standing interest in the conservation of endangered species, including the smalltooth sawfish, Florida manatee, imperiled sea turtles, and their habitats, and maintains active environmental education, scientific, and policy advocacy programs toward this end.

In summary, application of 5 U.S.C. §552(a)(4) to this request strongly supports a fee waiver. Please waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4). This request for a fee waiver should not be construed as an extension of time in which to reply to this FOIA request.

CONCLUSION

If you determine that portions of any records covered by this request are exempt from disclosure, please separate the exempt portions from the nonexempt portions and provide us with copies of the nonexempt portions. For any records that you determine to be exempt from release, please provide us with a specific description of the record or portion of the record along with a particularized description of the legal basis for withholding it as is required. See *Vaughn v. Rosen*, 484 F.2d 820, 827(D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

If any of the documents for which copies are requested of by the Conservancy are available electronically, you may send them to amberc@conservancy.org, or you may send them on a CD or DVD. If there are not electronic versions available, please send paper copies to me at the address contained in this request.

If you anticipate any delay for valid legal reasons in processing this request or if you foresee any problem relating to our request for a fee waiver, please notify me as soon as possible at (239) 262-0304 x286. Thank you for your time and consideration in this matter.

Sincerely,



Amber Crooks
Senior Natural Resources Specialist

Cc: Jennifer Hecker, Conservancy of Southwest Florida